

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR.**

**ORDER.**

Smt. Alka Mathur                      vs.                      Rajasthan State Road  
Development & Construction  
Corporation Ltd.

S.B. Civil Writ Petition No.2593/2003 under  
Article 226 of the Constitution of India.

Date of Order: August 25, 2005.

**PRESENT**

**HON'BLE MR. PRAKASH TATIA,J**

Mr. S.P. Sharma and Mr. Sanjay Mathur for the petitioner.  
Mr. N.M. Lodha and Mr. Anil Bhandari for the respondent.

**BY THE COURT:**

Brief facts of the case are that the petitioner was initially appointed in service with the respondent which was earlier known as Rajasthan State Bridge and Construction Corporation, Government of Rajasthan undertaking. According to the petitioner, she was appointed against a vacant post but was shown as temporary Junior Engineer with effect from 7.3.1991. According to the petitioner, in fact she was appointed on temporary basis as Junior Engineer but she was paid salary on daily wage basis. The petitioner's service was discontinued with

effect from 16.2.1994 and since her service was terminated in violation to Section 25F of the Industrial Disputes Act, 1947 (for short “the Act of 1947”), therefore, the petitioner raised a dispute against her verbal retrenchment order dated 16.2.1994. The matter was referred to the Labour Court, Jodhpur by the State Government by order dated 10.8.1998. The question referred to the Labour Court was “Whether the action of the respondent in dispensing with the service of the petitioner vide verbal order dated 16.2.1994 was legal and valid and if not, to what relief the petitioner was entitled ?” The Labour Court decided in favour of the petitioner and passed the award dated 29.11.2001 and held that the petitioner’s services have been wrongly dispensed with and the action of the respondent is illegal. The Labour Court directed the respondent to immediately reinstate the petitioner back on the post on which she was working prior to her retrenchment. The Labour Court also held that the services of the petitioner shall be treated to be continued and the petitioner shall be entitled to receive 25% of back wages from the date of reference i.e. from 10.10.1998.

Being dissatisfied with the aforesaid award of the Labour Court, Jodhpur dated 29.11.2001, the respondent preferred S.B. Civil Writ Petition No.426/2002 before the High Court and the same was dismissed by a detailed judgment of the learned Single Judge of this Court dated

8.8.2002. According to the petitioner, in the judgment of the learned Single Judge, it has been held that the petitioner was entitled to receive all benefits as granted by the Labour Court and it was further observed that the petitioner had been working on temporary basis and the appointment could not be treated as appointment on daily wage basis. According to the petitioner, the writ petition filed by the respondent was dismissed with clear observation that the petitioner was a Junior Engineer and was entitled to be reinstated on the said post.

The respondent preferred Special Appeal against the judgment of the learned Single Judge dated 8.8.2002 before the Division Bench of this Court, which too was dismissed. According to the petitioner, thereafter the respondent issued order reinstating the petitioner on 28.11.2002. By this order, the petitioner was posted as daily wage Junior Engineer with wages of Rs.125/- per day without giving her any benefit of continuity of service from 7.3.1991. Therefore, the petitioner submitted her objection before her employer pointing out that she was to be appointed not on the daily wage basis but on temporary basis and she be given regular pay scale and she also requested that her services were required to be treated as continuous from the date of her initial date of appointment, i.e. from 7.3.1991. Since the respondent did not comply with the request of the petitioner, therefore, she sent a notice

for initiation of the proceedings of contempt of court for not obeying the directions issued by the Labour Court and of this Court. As no action was taken by the respondent, therefore, the petitioner submitted contempt petition being S.B. Civil Contempt Petition No.103/2003 but according to the petitioner, in absence of petitioner's counsel, this Court on 7.2.2003 dismissed the petitioner's contempt petition holding that since the petition had been filed only against the award and not for not implementation of the award, therefore, the contempt petition would not lie.

According to the petitioner, thereafter, the respondent passed the order on 6.2.2003 which according to the petitioner is also a vague order as it only conveys that the petitioner's services shall be treated continued. Despite this order, the petitioner was paid salary on daily wage basis and has not been allowed regular pay scale.

According to the petitioner, she is eligible candidate and was working as Junior Engineer but is getting less salary and not the regular pay scale. According to the petitioner, there were as many as 93 sanctioned posts of Junior Engineer in the respondent-Corporation and the posts are still lying vacant but the petitioner is being kept on daily wage basis and other posts are being filled by giving placement to

chosen ones who are actually Junior Engineers working in the Public Works Department of the Government of Rajasthan. According to the petitioner, she possesses qualification required for the post of Junior Engineer and her appointment was only against a vacant post and her services are required to be counted from 7.3.1991 in the light of the order passed by the Labour Court and by this Court and, therefore, she is entitled to receive the regular pay scale with other service benefits of selection grade on completion of nine years of service as per order dated 17.2.1998. The petitioner went on submitting representations to the respondent but nothing was done by the respondent.

In the backdrop of these facts, the petitioner preferred this writ petition and is seeking direction against the respondent by declaring that the petitioner is entitled to receive regular pay scale of Junior Engineer and is also entitled to get all consequential benefits including the pay fixation with effect from the initial date of appointment and arrears of salary with effect from the date of passing of the award and the petitioner be treated as permanent Junior Engineer on completion of 10 years of service. The petitioner also claimed consequential benefits.

The respondent submitted reply to the writ petition. According to

the respondent, the petitioner was never appointed on or against the post of Junior Engineer nor could she have been appointed on the post of Junior Engineer as she was never appointed in accordance with the Rules framed for the appointment on the post of Junior Engineer. According to the respondent, the petitioner was engaged on daily wage basis and that too through some contracting agency and according to the respondent, she was never appointed in the cadre of Junior Engineer of the respondent-Corporation. It is also submitted that the Labour Court only held that removal of the petitioner from service was in violation to Section 25F of the Act of 1947 and, therefore, the Labour Court directed to reinstate the petitioner. However, the respondent admitted that the award became final as the award has been upheld by this Court upto the Special appeal.

According to the respondent, there are prescribed process and procedure for recruitment for the post of Junior Engineer which are provided in the Rajasthan State Bridge and Construction Corporation Services Regulations 1986. According to the respondent even after the order of the Labour Court, no right accrued to the petitioner for claiming regular appointment on the post of Junior Engineer or for regular pay scale of Junior Engineer as she was not selected and appointed under the Rules of 1986.

I considered the submissions of the learned counsel for the parties and the judgments cited by both the learned counsels. Since the matter relating to the claim of regularization of an employee has been considered in various judgments of the Hon'ble Apex Court and in the judgment of Division Bench of this Court in the case of Richpal Singh vs. State of Rajasthan ( 2005(1) WLC (Raj.) 548), I need not to refer all those previous judgments and it may be relevant to quote the conclusion drawn by the Division Bench of this Court in the case of Richpal Singh(supra):-

“ The principle foundation for regularizing the services of the employees in cases of temporary or irregular service continued for long on equities was denied from the directives in Part IV of the Constitution under Articles 39, 41 and 42. Mandate of Constitution under Articles 14 and 16 cutting the roots of arbitrariness and unreasonableness in every sphere of State action, Article 21 ensuring to life which includes right to livelihood and dignified living. Thus, under certain circumstances where not to continue a temporary or ad hoc appointment can be termed as arbitrary or unreasonable, the principle evolved for absorbing of such irregular appointees is termed as regularization. In a given case where incumbents, who have been initially appointed irregularly but within the province of the competence of appointing authority and have continued for long, discharged duties required by the employer, services may be regularized after framing a proper scheme of absorption, in terms of law laid down by Supreme Court. However, it must be borne in mind that there is no inherent or vested right of regularization, as the normal rule is that regular recruitment should be made in the regular manner. Thus, while giving such direction, the Court must act with due care and caution. It must ascertain the relevant facts and must be cognizant of

several situations and eventualities that may arise on account of such directions, including judicial restraint not to unduly over burden the State exchequer, which the State not be able to stand. Regularization in the name of sympathetic approach cannot be one sided overlooking the other side i.e. Unsympathetic to large number of eligible persons waiting for long time in queue seeking employment and encouraging back door entry, breach of statutory provisions at the cost of merit in service.”

In view of the above decision, it is clear that there is no inherent power vested right of regularization as the normal rule is that regular recruitment should be made in the regular manner. The Division Bench also held that under certain circumstances where not to continue a temporary or ad hoc appointment can be termed as arbitrary or unreasonable, the principle evolved for absorbing of such irregular appointees is termed as regularization. The Division Bench also held that the court must ascertain the relevant facts and must be cognizant of several situations and eventualities that may arise on account of such directions (of regularization), including the judicial restraint not to unduly over burden the State exchequer, which the State may not be able to stand. In view of the various judgments referred in the judgment of Richpal Singh(supra), it is clear that mere sympathetic approach cannot be a basis for issuing directions to regularize an employee.

In the light of the various decisions of the Hon'ble Apex Court, if

the facts of the present case are examined, it is not in dispute that the respondent gave appointment to the petitioner and it is the case of the petitioner that her appointment was only against a vacant post and she was duly qualified at the time of her appointment and the respondents are having a sanctioned strength of the post and they filled up whatever vacancies, by only getting the person on deputation from other departments. The petitioner's right to continue in service has already been recognized by the order of the labour court dated 29.11.2001 and by the decision of the learned Single Judge dated 8.8.2002 and by the order of the Division Bench by which the special appeal of the respondents was dismissed. It is a case of the petitioner that there are 89 sanctioned posts of Junior Engineers(Civil) in the Rajasthan State Road Development & Construction Corporation Limited (respondent) and against this, only 44 existing working Junior Engineers are there.

The petitioner submitted additional affidavit and pointed out that employees Roopa Ram, Kalu Ram, Hari Ram, Banwari Lal and Munna Lal Sharma were also appointed on daily wages and their services were regularized in regular pay scale of Chowkidars vide order dated 30.6.1984. Not only this but on the basis of the judgment passed by this Court in S.B.Civil Writ Petition NO.1384/1988 and affirmed by the

Division Bench in D.B.Special Appeal No.1718/1993-Resident Engineer vs. Sheetal Raj Bhansali, the respondent passed the order on 31.5.1995 and put said Dheetal Raj Bhansali in regular pay scale. In compliance to the decision of judgment of Jaipur Bench of this Court in S.B.Civil Writ Petition No.1081/97-Madan Lal Gujar vs. RSBCC, a statement was given before the High Court that RSBCC will regularize the services of Madan Lal Gujar and thereafter, in fact Madan Lal Gujar has been placed in regular pay scale of Helper Messenger and he is still continuing on the regular post and he has been granted further promotion as Junior Assistant vide order dated 18.10.2004. The petitioner has already worked on the post for the last more than 13 years and, therefore, even if the petitioner cannot claim regularization as a matter of right, still there is no reason for not issuing directions to respondents to consider the case of the petitioner as done by the respondents in the cases referred above and she can be screened for the purpose of declaring her as a permanent employee on the post of Junior Engineer on which she is serving. When the respondents themselves are regularizing services of other employees which is apparently clear from the documents placed by the petitioner in this case, there appears to be no reason for respondents to give discriminatory treatment to the petitioner by not considering the case of the petitioner. It may also be relevant to mention here that it is a case of not a mere sympathy but above facts

are sufficient for issuing directions upon the respondents to consider the case of the petitioner for regularization in peculiar facts and circumstances mentioned above and it is not a case of putting extra burden upon the respondent as it is not the case of the respondent that by regularizing the service of the petitioner, there will be some extra burden upon the respondent and that in case the petitioner's service will be terminated or she will be removed from service then the respondent will not be appointing any other person on the post on which the petitioner is working. By giving one more appointment in the facts of this case, the right of other person is also not effected because the large number of the posts are still lying vacant with the respondents which have not been filled up by the respondents by adopting regular selection process for which the Rules have been framed and the respondents are seeking persons on deputation from other departments.

Therefore, the writ petition of the petitioner is allowed. The respondents are directed to consider the case of the petitioner for regularization on the post of Junior Engineer and in case the age of the petitioner, as on the present time, comes in the way, then the age relaxation may be ordered. No order as to costs.

( PRAKASH TATIA ),J.

mlt.